IN THE IOWA DISTRICT COURT FOR WARREN COUNTY

CEDARBROOKE PLACE APARTMENTS I, LLLP, Petitioner-Appellant, vs. IOWA PROPERTY ASSESSMENT APPEAL BOARD, Respondent-Appellee, AND WARREN COUNTY BOARD OF REVIEW, Intervenor.	**CASE NO. CVCV035479** **RULING ON PETITION FOR JUDICIAL REVIEW**

On February 25, 2015, a contested unreported hearing was held on Petitioners' Petition for Judicial Review. Petitioner-Appellant was represented by Deborah M. Tarnish. Respondent-Appellee Iowa Property Assessment Appeal Board (PAAB) was represented by Jessica Braunschweig-Norris. No one appeared for the Warren County Board of Review. After hearing the arguments of counsel, reviewing the court file and the briefs filed by the parties and the Certified Administrative Record, the Court enters the following ruling reversing the decision of the Iowa Property Assessment Appeal Board and remanding the case to the Iowa Property Assessment Appeal Board.

STATEMENT OF THE CASE

This is an appeal by Cedarbrooke Place Apartments I, LLLP ("Cedarbrooke") from the Iowa Property Assessment Appeal Board's (the "PAAB") decision that Cedarbrooke's property could not be valued as section 42 housing for the January 1, 2013 valuation year because income and expense information was not provided to the Warren County Assessor by March 1, 2013. PAAB concluded that the failure to provide this information precluded the property owner from receiving the more favorable tax assessment treatment provided to a section 42 project and affirmed the Assessor's valuation of $4,858,100. The facts are not in dispute. The property in question is an apartment complex located at 2503, 2507 and 2511 Cedar Street in Norwalk, Iowa. The property was valued for assessment purposes at $4,858,100. (Record at 37). Cedarbrooke protested this valuation on a number of grounds, including the fact that this is a section 42 property and the Warren County Assessor's assessment was not calculated as prescribed by Iowa law. (Record at 7). The Board of Review denied Cedarbrooke's protest. (Record at 9). The case was then appealed to PAAB, which upheld the decision of the Warren County Board of Review and found that the failure to provide income and expense information prior to March 1, 2013 precluded Cedarbrooke from obtaining a valuation under the special rules provided for section 42 housing.

Cedarbrooke is an active section 42 housing property. (Record at 85). Cedarbrooke was awarded tax credits for this project by the Iowa Finance Authority in 2010, and land use restrictive covenants were recorded in Warren County in December 2012. (Ex. 3, Record at 90-113). The apartments were placed into service in December 2012. (Ex. 1, Record at 85). Internal Revenue Service Form 8609, Ex. 2, demonstrates the allocation of the low income

housing credits in March of 2013. (Record at 87-89).

Iowa law provides that when assessing section 42 property, the Assessor shall value the property using "the productive and earning capacity from the actual rents received as a method of appraisal and shall take into account the extent to which that use and limitation reduces the market value of the property. The assessor shall not consider any tax credit equity or other subsidized financing as income provided to the property in determining the assessed value." Iowa Code § 441.21(2).

Iowa Administrative Code 701-71.5(2) sets forth in detail the formula to be used by assessors in valuing section 42 housing, including setting out the direct capitalization method of valuing the property. The regulations also provide: "It shall be the responsibility of the property owner to file income and expense data with the local assessor by March 1 of each year." Iowa Administrative Code 701-71.5(c).

Although the Iowa Administrative Code regulations require the property owner to provide income and expense statements by March 1st, the statutory provisions governing the valuation of section 42 housing do not include this requirement. However, the statute does provide that the property shall not be subject to section 42 assessment procedures for the assessment year for which section 42 eligibility is withdrawn. "This notification [of withdrawal] must be provided to the assessor no later than March 1 of the assessment year or the owner will be subject to a penalty of five hundred dollars for that assessment year." See Iowa Code § 441.21(2). In contrast to statute, the administrative rules provide for the filing of income and expense data with the local assessor by March 1 of each year. See Iowa Administrative Code 701-71.5(2)(c). Cedarbrooke argues that there is no statutory basis for a

required March 1st filing deadline, and that the administrative rule's March 1 filing deadline is a permissive date rather than a mandatory deadline.

Cedarbrooke concedes that as a result of an oversight, it did not file the income and expense information by March 1, 2013. (Record at 116). James Sarcone, Cedarbrooke's representative, noted that Hubbell Realty had other section 42 housing projects in Polk County that came online at the same time as Cedarbrooke, and in both Polk County cases the income and expense information was presented to the Board of Review, and the Polk County Board of Review changed the assessment to provide for a valuation consistent with the treatment provided for section 42 housing projects. (Record at 127). In the same manner as occurred in Polk County, the income and expense information was provided by Cedarbrooke to the Board of Review. (Record at 126-27). Despite the fact that the income and expense information was provided to the Warren County Board of Review, it refused to treat the property as section 42 housing.

Despite the fact that Cedarbrooke is section 42 housing and therefore entitled to the application of the specific valuation process set forth in the Iowa Code, the Board of Review refused to value the property under these provisions, and PAAB agreed based on Cedarbrooke's failure to provide income and expense information by March 1, 2013. The PAAB refused to value the property as section 42 housing.

The PAAB found that the Administrative rule 701-71.5(2) sets forth in detail the formula to be used by assessors in valuing Section 42 housing. The rules require Section 42 owners to file income and expense data with the local assessor by March 1 of each year. Cedarbrooke conceded that it did not file the required data by March 1, and no income and

expense information was provided until the Board of Review petition was filed on May 6.

Although it acknowledged that the rule does not impose a consequence for untimely filing, the PAAB found that the rule provides: "It *shall* be the responsibility of the property owner to file income and expense data with the local assessor by March 1 of each year. The assessor may require the filing of additional information if deemed necessary." *Id.* (emphasis added).

The PAAB concluded in its Order as follows:

> "Cedarbrooke did not provide the income and expense data until it filed a petition with the Board of Review on May 6. Even if March 1st is not a deadline that precludes valuing the property as Section 42, the Assessor did not even have the information necessary to value the property when his assessment was due on April 15. For this reason, we affirm the Board of Review decision."

SCOPE OF REVIEW

This appeal is governed by the provisions of Iowa Code Chapter 17A and sections 441.38. 441.38B and 441.39. The district court functions as an appellate court. *Iowa Code* §17A.19(7). The Court's review is at law and not de novo; *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192, 193 (Iowa 1984). The burden of proof rests on the Board of Review. Iowa Code §17A.19(8).

"A court's role on judicial review of administrative proceedings is closely and strictly circumscribed." *Morrison v. Century Engineering*, 434 N.W.2d 874, 876 (Iowa 1989). "Sound public policy demands that final agency determinations must be undisturbed when based on accurate application of legal principles, and when they are within the scope of expertise assigned to the agency." *Office of Consumer Advocate v. Utilities Board*, 449 N.W.2d 383,

385 (Iowa 1989). The "cardinal rule of administrative law [is that] judgment calls are the province of the administrative tribunal and not of the courts." *Mercy Health Center v. State Health Facilities Council*, 360 N.W.2d 808, 809 (Iowa 1985); *McClure v. Iowa Real Estate Commission,* 356 N.W.2d 594 (Iowa App. 1984).

The Court defers to the agency's application of law to fact if statutorily granted to the agency. Iowa Code §17A.19(10)(m). It may be reversed only if the agency decision is "irrational, illogical, or wholly unjustifiable." Iowa Code §17A.19(8) "m."

The Court may affirm PAAB's action or remand the case to PAAB for further proceedings. §17A.19(10). Only where the Court finds that the substantial rights of the person seeking judicial relief have been prejudiced by the agency action shall the Court reverse, modify or grant other appropriate relief.

"(A)dministrative rules must be reasonable and consistent with legislative enactments. See *Holland v. State of Iowa*, 253 Iowa (1006) at 1010, 115 N.W.2d (at) 161. To the same effect is this statement in *Bruce Motor Freight, Inc. v. Lauterbach*, 247 Iowa 956, 961, 77 N.W.2d at 613, 616 (1956): 'Rules cannot be adopted that are at variance with statutory provisions, or that amend or nullify legislative intent.' See also 73 C.J.S. Public Administrative Bodies and Procedure s 94." See 2 Am.Jur.2d, Administrative Law, s 296, p. 123 (1962). *Schmitt v. Iowa Dep't of Soc. Servs.*, 263 N.W.2d 739, 745 (Iowa 1978)

If a real question on construction does arise, the interpretation of the statute rests solely with the courts. *Clark v. City of Des Moines*, 222 Iowa 317, 267 N.W. 97. It is true that courts give weight to administrative interpretation of statutes where the meaning admits of doubt and the

rule is of long standing. *Northwestern States Portland Cement Co. v. Board of Review*, 244 Iowa 720, 733, 58 N.W.2d 15, 23, and citations. However, it is equally clear that the plain provisions of the statutes cannot be altered by an administrative rule no matter how long it has existed or has been exercised. *City of Mason City v. Zerble*, 250 Iowa 102, 109, 93 N.W.2d 94, and citations; *City of Ames v. State Tax Commission*, supra, 246 Iowa 1016, 1022, 71 N.W.2d 15, 19.

ANALYSIS

The issue before the Court is whether Cedarbrooke's failure to provide income and expense statements to the Warren County Assessor by March 1 precludes the subject project from being valued as Section 42 low income housing. The determination of this issue is a legal question involving the proper interpretation of Iowa Code § 441.21(2). PAAB acknowledges that it has not been given explicit or implicit authority to interpret section 441.21(2). (PAAB Brief at 4). This Court is not bound by the PAAB's interpretation of the statute nor is the Court required to give deference to PAAB's determination of this legal question.

Cedarbrooke claims that the effect of PAAB's interpretation of the statute and its ruling is to prohibit a taxpayer from appealing a determination that property may not be valued as Section 42 property when no income and expense information is provided by March 1.

The PAAB argues that the Administrative Rule does not invalidate or conflict with section 441.21(2). The fact that it contains a filing date which is absent from the statute does not make it inconsistent with the statute. Rather, the Rule describes the process and elaborates on the methodology by which property can be assessed consistent with section 441.21(2).

The Court agrees that the Rule provides for an orderly process for assessment of the property. But the PAAB's decision that the rule prevents the property from being valued as Section 42 property is contrary to the statute. The statute does not provide such a cut-off date. The administrative rules may not make law, or change the legal meaning of the statute. Iowa Code § 441.21(2) does not provide consequences for failing to provide the information by March 1, despite the fact that it provides consequences for failing to withdraw a Section 42 designation by March 1. The statute simply does not provide the severe consequences that would result from PAAB's decision. The PAAB's Order is reversed and the case is remanded to PAAB for further fact-finding and conclusions of law pertaining to the property's correct valuation. § 17A.19(10).

ORDER

IT IS THE ORDER OF THE COURT that the decision of the Iowa Property Assessment Appeal Board is **REVERSED.** The case is remanded to the Iowa Property Assessment Appeal Board for further proceedings. Costs are assessed to the Iowa Property Assessment Appeal Board.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV035479	CEDARBROOKE PLACE APTS I LLP VS IOWA PAAB ETAL

So Ordered

Richard B. Clogg, District Court Judge,
Fifth Judicial District of Iowa